

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NANCY K. O'ROURKE,

Plaintiff,

v.

Case No. 13-CV-193 RB/ACT

**NORTHERN NEW MEXICO COLLEGE,
SUSAN PACHECO and NANCY BARCELO,**

Defendants.

AMENDED ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

COME NOW the Defendants by and through their attorneys Basham & Basham, P.C. (Mark A. Basham) and answers Plaintiff's First Amended Complaint as follows:

1. Defendants admit the allegations contained in Paragraphs 1 – 8 of the Complaint.
2. Defendants deny the allegations contained in Paragraph 9 of the Complaint and further state the EEOC Dismissal and Notice of Rights speaks for itself.
3. Defendants admit the allegations contained in Paragraphs 10 – 12 of the Complaint.
4. Defendants are without sufficient information as the allegations contained in Paragraphs 13 and 14 of the Complaint and, therefore, deny them.
5. Defendants deny the allegations contained in Paragraphs 15 – 18 of the Complaint.
6. With respect to Paragraph 19 of the Complaint, Defendants admit Ms. O'Rourke had professional failures. Defendants deny the remaining allegations contained in Paragraph 19 of the Complaint.
7. Defendants admit the allegations contained in Paragraph 20 of the Complaint.
8. Defendants admit in Paragraph 21 of the Complaint that on September 16, 2011 Ms. O'Rourke was told that she was being transferred into another position at no loss in pay but

further state that Defendants did not become aware that Ms. O'Rourke had filed a complaint with the New Mexico Human Rights Bureau until September 19, 2011. All other allegations contained in Paragraph 21 are denied.

9. Defendants deny the allegations contained in Paragraphs 22 and 23 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 24 of the Complaint.

11. Defendants deny the allegations contained in Paragraphs 25 and 26 of the Complaint.

12. Defendants admit the allegations contained in Paragraph 27 of the Complaint.

13. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

14. With respect Paragraph 29 of the Complaint, Defendants admit that they were in positions of authority, however, Defendants deny the remaining allegations contained in Paragraph 29 as there was no inappropriate action that they took that needed to be prevented or corrected.

15. Defendants admit the allegations contained in Paragraph 30 of the Complaint.

16. With respect to Paragraph 31 of the Complaint, Defendants restate their answers to Paragraphs 1 – 30 as if fully stated herein.

17. Defendants deny the allegations contained in Paragraphs 32 – 35 of the Complaint.

18. With respect to Paragraph 36 of the Complaint, Defendants restate their answers to Paragraphs 1 – 35 as if fully stated herein.

19. Defendants deny the allegations contained in Paragraphs 37 – 40 of the Complaint and further state that Ms. O'Rourke is not entitled to any of the relief she has requested in Paragraphs A – D.

20. Any allegations not specifically admitted herein are hereby denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim for upon which relief may be granted.
2. Plaintiff's Complaint is barred by sovereign immunity.
3. At all times relevant hereto, Defendants actions were reasonable, without malice, proper, legal and within the scope of their lawful duties.
4. Plaintiff has not suffered any detriment or damages as a result of the incidents alleged in the Complaint.
5. Any injury or damages allegedly suffered by the Plaintiff were due to and caused by Plaintiff's own acts and conduct.
6. Plaintiff has failed to allege and cannot prove an official policy or pattern which resulted in the alleged constitutional tort.
7. Defendants are entitled to qualified immunity.
8. Plaintiff's Complaint is barred by the statute of limitations.
9. Plaintiff's claims present no justiciable controversy, as the Plaintiff has suffered no damages.
10. Plaintiff's claims for damages for alleged constitutional rights violations are not actionable because damages are not available for the deprivation of constitutional rights per se but only for the injuries caused by such deprivations. Plaintiff has suffered no injury.
11. Defendants reserve the right to bring such additional affirmative defenses as discovery may reveal.

WHEREFORE, Defendants pray that the Complaint be dismissed with prejudice and that they be awarded their costs and attorney's fees and such further relief as the Court may deem proper.

Respectfully Submitted,

/s/ **Mark A. Basham**

Mark A. Basham
Basham & Basham, P.C.
2205 Miguel Chavez, Suite A
Santa Fe, New Mexico 87505
(505) 988-4575
mbasham@bbpcnm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of October, 2013, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing listed below:

Samuel C. Wolf
Jones, Snead, Wertheim & Clifford, P.A.
P.O. Box 2228
Santa Fe, NM 87504-2228

/s/ **Mark A. Basham**

Mark A. Basham